



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/29274/2014

THE IMMIGRATION ACTS

Heard at Field House

On 4th March 2015

**Decision &
Promulgated
9th March 2015**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR ALGENT IMERAJ
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Respondent: Mrs P Glass, Counsel

DECISION AND REASONS

- 1.** Mr Imeraj is a citizen of Albania and who I shall call the claimant. He was successful in his appeal under the Immigration (European Economic Area) Regulations 2006 before First-tier Tribunal Judge Majid in a decision promulgated on 1st December 2014.
- 2.** He had applied for a residence card which the Secretary of State refused on the basis that the marriage was one of convenience only for reasons set out in the refusal letter dated 2nd July 2014. The grounds of application

contend that the judge failed to carry out a fair assessment of all the evidence and had failed to consider any of the reasons for refusal detailed in the refusal letter which quotes extensively the major discrepancies in the evidence of the parties. Furthermore the judge had erred in law by failing to detail any evidence that was before the Tribunal to satisfy the judge as to whether the EEA national was in fact exercising treaty rights – as detailed on the refusal letter it was the position of the Secretary of State that she was not.

3. Permission to appeal was granted on the basis that the judge's failure to engage with the evidence and to give adequate reasons for his finding that the marriage was genuine.
4. Thus the matter came before me on the above date.
5. For the Home Office Mr Melvin relied on the grounds of application. It was said the decision fell well below the standard to be expected of a judge and the matter should be remitted to the First-tier Tribunal for a fresh hearing. The judge had not dealt with the major issues involved and had ignored the huge discrepancies in the evidence.
6. For the claimant Mrs Glass said that there had been a proper hearing before the judge. Both the Appellant and his wife had appeared and they were a loving couple. They had always been together. They had given their evidence. There was no more they could have done. While the reasoning might not be mapped out in detail and in the manner the court would wish the discrepancies were minor and overall the depth of the relationship came across. As such there was no error in law and the decision should stand.
7. I reserved my decision.

Conclusions

8. The reasons for refusal letter highlights numerous discrepancies on a number of different occasions between the parties explaining the conclusion of the Secretary of State that the marriage undertaken on 18th October 2013 was one of convenience only. Furthermore the Secretary of State also concluded that the EEA family member was not exercising treaty rights at the material time and was therefore not a qualified person in terms of the Regulations.
9. For whatever reason the judge failed to engage with the points taken against the Appellant in the refusal letter. There was no analysis by the judge of the number of discrepancies in the interviews of the Appellant and Sponsor and no analysis of the alleged discrepancies in the oral evidence. Unfortunately the judge engaged in generalisations and irrelevancies (see paragraphs 17 and 18) which are not helpful to the resolution of the contentious issues between the parties.

- 10.** There is considerable merit in the grounds of application and by a very wide margin indeed it can be said that there is a material error of law in the judge's decision which cannot stand for lack of any adequate reasoning on the central issues. The Secretary of State has not had a fair hearing in this case.
- 11.** The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be re-made is such that it is appropriate to remit the case to the First-tier Tribunal.

Notice of Decision

- 12.** The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
- 13.** I set aside the decision.
- 14.** I remit the appeal to the First-tier Tribunal.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald